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No. 92-4

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

JOHNNY MYNHIER BRADLEY and
KARL BRADLEY . . . . . PETITIONERS

versus

JUANITA ROBINSON,
FARRIS H. GILLESPIE,
and ASA R. LITTLE, JR. . .RESPONDENTS

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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* * * * * * *

STATEMENT OF THE CASE

The Respondents do not accept the Statement of the Case as contained in

Petitioners' Petition for Writ of Certiorari.

In an unpublished Opinion, a panel of the United States Court of Appeals for the Sixth Circuit, held that the District Court for the Eastern District of Kentucky was correct when it dismissed the action of the Plaintiffs (Petitioners herein) for lack of jurisdiction under the Anti-Injunction Act, 28 U.S.C. §2283.[1] The Court, after a careful analysis of the record, specifically held, under *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 100 L.Ed.2d 127, 108 S.Ct. 1684 (1988), that the court in a previous

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[1] The Act provides:

A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

1974 condemnation case did not decide the issue as to the title of a 5.94 acre tract of land presently being litigated and that the proper forum to present Plaintiffs "res judicata" argument was the state court having jurisdiction over the action to quiet title to the said tract.

This action was filed by the Petitioners seeking to enjoin the Defendants, et al, from proceeding with that state court action to quiet title to the 5.94 acre tract. The state court action involves overlapping boundaries of some 550 feet between adjoining property owners and claims of title by adverse possession for more than fifteen (15) years by each of the parties.

In 1974, the United States Government had commenced a condemnation action to

acquire a fee title and perpetual easements over three (3) tracts of land containing approximately 42 acres. The government named all parties defendants who it believed could potentially claim ownership to the condemned tracts of land. As to two (2) of the tracts, only the Plaintiffs herein were named as claimants. The Defendants herein were named as joint claimants for a .76 acre tract (valued at approximately $100.00), along with the Plaintiffs. The Defendants herein did not enter their appearance and made no claim to the proceeds of the condemnation action. The Bradleys (Plaintiffs) moved for a Judgment in the condemnation action to declare them as full owners of that .76 acre tract, but did not serve the motion upon the Gillespies and Robinsons. The

panel of land commissioners in their report to the Court dated April 8, 1977, mentioned the existence of this motion, but referred the matter to the court for determination. The Court on May 16, 1977 adopted the report of the land commissioners, but did not address the motion to be named full owners of this .76 acre tract. However the Court did give the Robinsons and Gillespies twenty (20) days to respond to this motion. No such response was filed and on June 30, 1977, all funds were disbursed to the Plaintiffs from the Court, but the motion was never ruled on.

In July of 1990, the Robinsons and the Gillespies (Defendants herein) initiated a Kentucky state court action to quiet title to a 5.94 acre tract adjoining the property condemned in 1974, and alleged

ownership subject to the overlapping deeds and by adverse possession for more than fifteen (15) years.

The Plaintiffs (herein) then brought this action in U.S. District Court to enjoin the state court proceedings under the theory that because the 5.94 acres had the alleged same source of title as the .76 acres of condemned property, "res judicata" prevented the determination of ownership of the 5.94 acre tract, and since Defendants had not contested the question as to the .76 acres, they could not contest title to the 5.94 acres now. The District Court dismissed the Plaintiffs' Complaint for lack of jurisdiction and same was affirmed by the United States Court of Appeals for the Sixth Circuit, holding that no exception to the Anti-Injunction Act applied to

this case.

The Sixth Circuit evidently found it unnecessary to reach Plaintiffs' issue regarding joining the United States as a party plaintiff, since the U.S. is not and has not ever made any claim to the 5.94 acre tract presently in dispute. It also did not reach the "res judicata" issue on its merits, including matters argued by the Defendants, such as whether Rule 71A of the Federal Rules of Civil Procedure even permits the claimants in a condemnation action to litigate the title to property not being taken in the condemnation proceeding.

ARGUMENT

I. The Petition does not present an issue upon which the U.S. Court of Appeals for the Sixth Circuit so far departed from

the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

At page 6 of the Petition for Writ of Certiorari, the Petitioners complain of the failure of the Sixth Circuit to consider Petitioners' issue regarding joining the United States of America as a party plaintiff. The District Court had previously overruled the Motion.

One answer to Petitioners' argument is quite simply that there was no need to reach the issue of joining the United States of America, once the Court had decided that the Anti-Injunction Act, under *Chick Kam Choo v. Exxon*, 486 U.S. 140 (1988), prohibited the enjoining of the Kentucky state court proceedings and that there was no applicable exception contained therein.

Secondly, the Sixth Circuit did in fact rule on this issue, when it affirmed the District Court. The Sixth Circuit just did not see fit to state its reasons for so ruling.

Furthermore, it is patently obvious that the United States of America is not making any claim concerning the property which is in dispute between the Petitioners and the Respondents. This motion was nothing more than an attempt by the Petitioners to gain a basis for Federal Court jurisdiction in this case, which they never had. The Court of Appeals for the Sixth Circuit was correct in affirming the District Court.

II. The decision below did not decide an important question of federal law which has not been settled by the Supreme

Court.

At pages 6, 7 and 8 of the Petition for Writ of Certiorari, the Petitioners argue that the application of *Chick Kam Choo v. Exxon, supra,* to the facts of this case by the Sixth Circuit in some manner narrows or reduces the previous holding of this court in *Federated Department Stores, Inc. v. Moite,* 452 U.S. 394, 69 L.Ed.2d 103, 101 S.Ct. 2424 (1981). These arguments are incorrect.

Federated, supra, held that the principles of res judicata barred relitigation of an unappealed adverse Judgment, even though that Judgment rested on overruled principle and other similar actions had been successfully appealed. That decision in no way conflicts with the holding in *Chick Kam Choo, supra*.

Chick Kam Choo, supra, held that the

principles of res judicata were not the same as the "relitigation" exception in the Anti-Injunction Act. *Chick Kam Choo* held that an issue had to be in fact litigated and decided by a federal court in order to meet the exception in the Anti-Injunction Act. The principles of res judicata are substantially broader and different, specifically, in that res judicata applies to certain matters that *could have been raised* in prior litigation, but were not. There is absolutely no conflict in the two decisions.

In the first paragraph which begins on page 7 of the Petition, the Petitioners state that the Respondents argued in District Court Memorandum that *Federated Department Stores, Inc., supra,* had been impliedly overruled by *Chick Kam Choo.* That statement is incorrect. The following is a direct

quote of the argument made by Respondents in the District Court Memorandum referred to:

> Some of the cases cited by the Plaintiffs in their Memorandum appear to hold that this Relitigation Exception also covers matters that could have been, but were not actually litigated before the Federal Court. These cases are no longer good law. They were impliedly overruled by the United States Supreme Court in 1988.
>
> In *Chick Kam Choo v. Exxon Corporation*, 486 US 140, 100 L Ed 2d 127, 108 S Ct 1684 (1988), the Supreme Court at page 148 held:
>
> > ..., an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the Federal Court...this prerequisite is strict and narrow (Emphasis added).

The foregoing statement in the District Court Memorandum is correct. This court, in *Chick Kam Choo, supra*,

eliminated a conflict between the circuits as to the breadth of the "relitigation" exception in the Anti-Injunction Act. It did not narrow the principles of res judicata, and Respondents' Memorandum did not say so.[2]

The Petition fails to demonstrate an important question of federal law which has not been settled by this Court.

III. The decision below does not conflict with previous decisions of this court, or with decisions of other circuits on these issues.

At pages 8, 9 and 10 of the Petition, Petitioners argue that some kind of

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[2] Petitioners fail to explain how any argument that might have been made in a District Court Memorandum could have affected the decision of the United States Court of Appeals for the Sixth Circuit.

conflict among the circuits or with cases from the Supreme Court has been created by the decision below. Such arguments are incorrect.

The issues asserted by Petitioners concerning damages in partial-taking cases and the measure of damages reflecting the value of a parent tract before and after the taking were not decided by the United States Court of Appeals for the Sixth Circuit or by the District Court. Those courts found no need to reach those issues,[3] since they found that *Chick Kam Choo, supra*, was applicable. These issues may be appropriate to assert in determining

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[3] See *United States v. Virginia Electric Company*, 365 U.S. 624, 81 S.Ct. 784, 5 L.Ed.2d 838 (1961); *United States v. 8.41 Acres of Land*, 680 F2d 388 (5th Cir. 1982); *United States v. 50.50 Acres of Land*, 931 F2d 1349 (9th Cir. 1991); *United States v. 429.50 Acres of Land*, 612 F2d 459 (9th Cir. 1980).

whether the principles of res judicata apply to this case. However, they have not been passed upon by any court and would certainly be inappropriate for first time determination under a Petition for Writ of Certiorari.

At page 9 of the Petition, Petitioners cite cases holding that federal courts have jurisdiction to enjoin state court proceedings at appropriate times. Respondents have no argument with any of those decisions.[4] In fact, *Samuel C. Ennis & Company v. Woodmar Realty Company*, 542 F.2d 45, 49 (7th Cir. 1976) holds correctly as follows:

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[4] See, *Samuel C. Ennis & Company v. Woodmar Realty Company*, 542 F2d 45 (7th Cir. 1976); *Local Loan Company v. Hunt*, 292 U.S. 234, 54 S.Ct. 695, 78 L.Ed 1230 (1934); *Dugas v. American Surety Company*, 300 U.S. 414, 57 S.Ct. 515, 81 L.Ed 720 (1937).

> We noted earlier that the allegations made in *Woodmar's* state complaint were fully litigated and rejected by the Bankruptcy Court. (Emphasis added).

There is no conflict created by this case, either with prior cases of the Supreme Court or with other circuits.

IV. The United States Court of Appeals for the Sixth Circuit analyzed the record and properly applied the facts to established law.

The record herein consisted not only of the pleadings in the current case, but also included the 1974 condemnation case record. Having analyzed the record, the Sixth Circuit found at pp 7-8:

We are satisfied, upon review of the record, that the issues presented in the current state court action were never decided by the federal court in the condemnation proceedings. The task is to determine what the earlier federal order actually said. *Chick Kam Choo*, 486 U.S. at 148. We are not persuaded that title to the disputed land was expressly or necessarily decided in the condemnation action. Moreover, the adverse possession claims could not even have been

considered in 1977. Thus, plaintiffs fail to make the "strong and unequivocal showing of relitigation of the same issue" necessary "to overcome the federal courts' proper disinclination to intermeddle in state court proceedings". *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66, 68 (1st Cir. 1989) (quoting *Southern California Petroleum Corp. v. Harper*, 273 F.2d 715, 719 (5th Cir. 1960)). Plaintiffs' res judicata claims are not necessarily without merit, yet "the proper forum for

a complete investigation of the res judicata effects of the district court's judgment is the state court," which remains fully competent and able to resolve the issue. *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 643 (2d Cir. 1989).

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED,

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